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**CITY OF KELOWNA  
MEMORANDUM**

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**Date:** December 10, 2004  
**File No.:** OCP04-0013/Z04-0053/HRA04-0003  
**To:** CITY MANAGER  
**From:** PLANNING AND CORPORATE SERVICES DEPARTMENT  
**Subject:**

**APPLICATION NO.** OCP04-0013/Z04-  
0053/HRA04-0003  
**AT:** 780 Rutland Road N

**OWNER:** School District No. 23  
**APPLICANT:** Protech Consultants Ltd.

**PURPOSE:** TO AMEND THE OFFICIAL COMMUNITY PLAN FUTURE LAND USE DESIGNATION FROM THE EDUCATION & MAJOR INSTITUTIONAL TO THE LOW DENSITY MULTIPLE DWELLING DESIGNATION & MEDIUM DENSITY MULTIPLE DWELLING DESIGNATION.

TO REZONE THE SUBJECT PROPERTY FROM THE P2- EDUCATION & MINOR INSTITUTIONAL ZONE TO RM3- LOW DENSITY MULTIPLE HOUSING ZONE & RM5- MEDIUM DENSITY MULTIPLE HOUSING ZONE.

TO ENTER INTO A HERITAGE REVITALIZATION AGREEMENT TO FACILITATE THE REDEVELOPMENT OF THE SUBJECT PROPERTIES FOR MULTI-DWELLING HOUSING, INCLUDING THE ADAPTIVE RE-USE OF THE HERITAGE BUILDING FOR APARTMENT HOUSING, AND TO ALLOW VARIANCES TO THE REAR & SIDE YARD SETBACKS REQUIRED TO FACILITATE THE FUTURE SUBDIVISION OF THE SITE.

**EXISTING ZONE:** P2- EDUCATION & MINOR INSTITUTIONAL

**PROPOSED ZONE:** RM3 – LOW DENSITY MULTIPLE HOUSING  
RM5 – MEDIUM DENSITY MULTIPLE HOUSING

**REPORT PREPARED BY:** KEIKO NITTEL

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SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

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**1.0 RECOMMENDATION**

THAT OCP Bylaw Amendment No. OCP04-0013 to amend Map 19.1 of the *Kelowna 2020* Official Community Plan Bylaw No. 7600 by changing the Future Land Use designation of Lot 48, Section 26, Twp. 426 ODYD, Plan 426 except Parcel A (Plan B3687) and Lot 1, Section 26, Township 26, ODYD, Plan 2166 located on Rutland Road N, Kelowna, B.C., from the Education & Major Institutional designation to the Low Density Multiple Unit Residential and Medium Density designations, as shown on Map "A" attached to the report of Planning & Development Services Department, dated December 10, 2004, be considered by Council;

THAT Rezoning Application No. Z04-0053 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 48, Section 26, Twp. 26 ODYD, Plan 426 except Parcel A (Plan B3687) and Lot 1, Section 26, Township 26, ODYD, Plan 2166 located on

Rutland Road N, Kelowna, B.C. from the P2 Education & Major Institutional zone to the RM3 – Low Density Multiple Housing and RM5 – Medium Density Multiple Housing zones as shown on Map “A” attached to the report of Planning & Development Services Department, dated December 10, 2004 be considered by Council;

THAT Council authorize the City of Kelowna to enter into a Heritage Revitalization Agreement for the properties Lot 48, Section 26, Twp. 26, ODYD, Plan 426 except Parcel A (Plan B3687) and Lot 1, Section 26, Township 26, ODYD, Plan 2166, located on Rutland Road N, in the form of such agreement attached to and forming part of this bylaw as “Schedule A”;

THAT the Official Community Plan Bylaw Amendment, Zone Amending Bylaw, and Heritage Revitalization Agreement be forwarded to a Public Hearing for further consideration;

THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of the Works & Utilities Department being completed to their satisfaction

THAT final adoption of the zone amending bylaw be considered subsequent to the adoption of the Heritage Revitalization Agreement;

AND THAT final adoption of the zone amending bylaw be considered in conjunction with Council's consideration of a Development Permit for the Phase 1 of the development, as shown on Map "A" attached to the report of Planning & Development Services Department, dated December 10, 2004 on the subject property;

## 2.0 SUMMARY

The applicant is proposing to redevelop the old Rutland Elementary School site. The applicant has concurrent applications in process to amend the Official Community Plan future land use designations to allow for multi-dwelling designations, to rezone the subject properties to RM3-Low Density Multiple Housing and RM5- Medium Density Multiple Housing designations, and to obtain a development permit to allow for the construction of 16 townhouse units and 1 apartment building on the northern portion of the site. As the old brick schoolhouse is a heritage building, a Heritage Revitalization Agreement (HRA) is also to be entered into in order to ensure its preservation and restoration. The HRA will also facilitate the lot line adjustment of the two existing properties by allowing variances to the rear and side yard setbacks. At a later date, the applicant intends on making application for a permit the southern portion of the site for which the conceptual plans are proposing two apartment buildings as well as the renovation of the heritage building, to be rehabilitated to house 8 apartment units. As the heritage revitalization agreement is to be registered on the title of the property, the form and character of Phase II is to be addressed under a heritage alteration permit.

## 3.0 ADVISORY PLANNING COMMISSION

The above-noted application was reviewed by the Advisory Planning Commission at the meeting of October 26,2004 and the following recommendation was passed:

THAT the Advisory Planning Commission supports Official Community Plan Amendment Application No. OCP04-0013 and Rezoning Application No. Z04-0053, for 770/780 Rutland Road N, Lot 1, Plan 2166 and Lot 48, Plan 426, Sec. 26, Twp. 26, ODYD, by Protech Consultants Ltd. (Grant Maddock), to amend the Official Community Plan Future Land Use from the Single/Two Unit Residential designation to the Multiple Unit Residential – Low Density and Multiple Unit Residential -Medium Density designation; and to rezone from the P2-Education and Minor Institutional zone to the RM3-Low Density Multiple Housing zone and the RM5-Medium Density Multiple Housing zone;

#### 4.0 COMMUNITY HERITAGE COMMISSION

The above-noted application was reviewed by the Community Heritage Commission at the meeting of December 7, 2004 and the following recommendation was passed:

THAT the Community Heritage Commission supports OCP04-0013, Z04-0053, and HRA04-0003 applications to rezone the subject property for multiple unit residential uses and enter into an Heritage Revitalization Agreement to adaptively re-use and rehabilitate the old brick Rutland Elementary school building for residential purposes and wish to provide the following comments:

- temporary use of the school building is encouraged;
- preservation of mature landscaping is encouraged;
- maintenance standards and schedules are encouraged to prevent further deterioration;
- sight lines of the school from Rutland Road should be preserved;
- the proposed apartment building located on the north portion of the site should be pushed further north to provide a 45 degree sightline from the school to Rutland Road;
- information about the history of the school building should be provided by the applicant in an easily accessible public location on the site.

#### 5.0 BACKGROUND

##### 5.1 The Proposal

The applicant is proposing to develop the former Rutland Elementary School site in two phases. The site, which consists of two legal lots, will require a lot line adjustment to facilitate the proposed development. The new proposed northern lot is to be a split zoned lot with the RM3-Low Density Multi-dwelling zoning designation along the north and west property lines providing transition from the adjacent single/two dwelling neighbourhood. The eastern portion of the lot, adjacent to Rutland Road, is to be zoned RM5 – Medium Density Multiple Dwelling Housing.

The new proposed southern lot is to be rezoned to the RM5- Medium Density Multiple Dwelling designation. The existing brick school house will be retained on the proposed southern lot with the proposed construction of two additional four storey apartment buildings. A Heritage Revitalization Agreement will facilitate the proposed subdivision by allowing for variances to the side yard and rear yard setbacks to the existing Heritage Building. The variances to the setbacks are required only along internal portions of the lot. The new buildings on each of the proposed lots will meet the setbacks requirements.

One access from Rutland Road North is proposed on each lot. A driving aisle running mid-site on both lots will link the two lots internally. An access easement on each lot will therefore be required. All parking for each lot is to be accessed from this internal driveway. Parking for the townhouses will be provided in double car garages with tandem parking in front. Parking for the proposed apartment buildings is to be located in both underground parkades and surface parking spaces.

The site will be surrounded along the north, west, and south property lines with a 6' chainlink fence. Connection to the existing pathway along the west side of the property will be maintained. Several existing trees are to be preserved with additional trees planted along the property lines as well as throughout the development. A large grassed area in front of the existing school building will be maintained. Planting beds are also integrated throughout the proposed development.

In addition, the existing two pedestrian linkages to the adjacent neighbourhood will be maintained. The landscaping plan proposes the planting of trees along all of the property lines. Along the rear lot line a mix of linden, spruce and pine tree will buffer the development from the

adjacent properties. A variety of maple trees are to be planted throughout the interior of the site. Adjacent to the sidewalk along Rutland Road, London planetrees will line the property.

### **Phase I (Northern Lot)**

The applicant intends on first developing the proposed lot on the north end of the site. At this time, an application for a development permit for the townhouses and "Building A" has been made. Phase I of the overall development consists of 16 units of semi-detached and row housing and 56 units of apartment housing. The RM3 portion of the lot, consisting of two semi-detached and three fourplex buildings, runs along the north and west property lines. With a height of two storeys, these buildings create a good transition from the adjacent neighbourhood to the RM5 – Medium Density Multiple Housing portion of the proposed lot adjacent to Rutland Road N. In this location, the applicant is proposing to develop a four storey apartment building. The proposed low density multiple housing buildings are to be two storeys in height at the middle of the buildings and tiered down to one storey at either end.

Architectural detailing on the proposed townhouse and apartment building facades includes dental molding at the base on the window trim and detailing within the gables of the roof. Detailing on the rear elevations of the buildings includes several different window types and finishes. The arching above the main floor windows replicates the windows on the schoolhouse building providing some continuity throughout the development. The buildings are to be finished in a neutral toned ("pebble") horizontal siding with cream ("linen") trim. Columns adjacent the front doors, and the chimneys, are to be finished with brick that coordinates with the finish of the schoolhouse building. The proposed roofing is to consist of laminate shingles in "weathered wood", a dark multi-toned material. The applicant uses sub-roofs in an attempt to break up the roofline.

### **Phase 2 ( Southern Lot)**

In order to ensure the preservation and restoration of the Rutland Elementary School heritage building, a Heritage Revitalization Agreement (HRA) application has been made. The HRA will allow the existing two storey building to be converted into a total of eight one bedroom apartment units. In addition, the HRA will facilitate the proposed lot line adjustment by allowing for variances to the rear and side yard setbacks to the school building. The variances to the setbacks are to internal lot lines only and therefore do not impact adjacent properties.

The HRA controls the phasing of the development. The development permit for the northern portion of the site will be permitted to proceed prior to the restoration of the heritage building. The lot adjustment and heritage alteration permit for the southern portion of the site would not be permitted until such time that the brick schoolhouse has received an occupancy permit for the proposed residential units. The attached site plan and elevation drawings will form part of the HRA in order to ensure the form and character of the development is compatible with that of the brick school building.

The existing brick school building was opened in 1914 and used as a schoolhouse until its closure in 2003. Originally known as Black Mountain School, the school was renamed when the school district name became the Rutland School District. At first only two classrooms in the building were used, however, by 1929 an additional two classrooms had been fitted up in the basement of the building. When the nearby high school opened in 1949, the building retained the elementary grades.

The brick school building was built to specifications of the Department of Public Works by W.W. Raymer and Wad & Baldock. The architectural significance of the building lies in that it is a very good example of a pre-WWI school building. The building was constructed in the Beaux Arts tradition of Institutional buildings with late Victorian details such as the arched window opening, pilasters, and gabled subroofs. Other significant architectural details include the pilasters

denoting the structural bays on the end of the building as well as the arched window openings and side entrances.

Two additional four storey apartment buildings are proposed on the southern lot. A separate permit will be required to address the form and character of these buildings. The form and character of the new proposed buildings, and any proposed changes to the existing heritage building, will be addressed under a heritage alteration permit, instead of a development permit, as the heritage revitalization agreement will be registered on title. At this stage, concept plans for apartment buildings show a mix of 2 and 3 bedroom units. The exterior design of the proposed new buildings is to be consistent with that proposed for Building A on the adjacent lot. The concept plans also indicate that the proposed four storey building meets the minimum required setbacks.

The application meets the requirements of the proposed RM5- Medium Density Multiple-Family Zone and RM3- Low Density Multiple Housing Zone as follows:

CRITERIA	PROPOSAL	RM5 ZONE REQUIREMENTS
<b>Lot 1 (Northern Portion)</b>		
Site Area (m <sup>2</sup> )	7126.9m <sup>2</sup> 4508.7m <sup>2</sup>	1400m <sup>2</sup>
Site Width (m)	121.7m	30.0m
Site Depth (m)	88.22m	35.0m
Site Coverage (%)	32%/ 49% 31%/ 60%	40% (50% with buildings, driveway, parking) RM3 40% (60% with buildings, driveway, parking) RM5
F.A.R.	0.38 1.06	0.56 RM3 1.21 RM5
Setbacks (m)	RM3/RM5	RM3/RM5
- Front (east)	4.5m/6.0m	4.5m/6.0m
- Rear (west)	7.5m/n/a	7.5m/9.0m
- Side (south)	6.1m/7.62m	4.5m/7.5m
- Side (north)	6.0m/n/a	4.5m/7.5m
Parking Stalls (#)	<u>Apartment</u> 44 underground 34 surface <u>Townhouses</u> 32 garage & 32 tandem surface =32 Total 126	<u>Apartment</u> 23 2 bedroom @ 1.50 = 48 24 1 bedroom @ 1.25 = 30 <u>Townhouses</u> 16 3 bedroom @ 2.00 = 32 Total 110
Bicycle Stalls (#)	44 spaces 16 spaces in garages 8 space min. at apartment building entrance 20 spaces remaining within underground parking area	36 stalls (0.05 per dwelling unit of Class I) 8 stalls (0.10 per dwelling unit of Class II) Total 44
Separation between principal buildings	4.0m min.	3.0m
Height (m) Apartment (RM5) Row Housing (RM3)	13.7m 6.9m	16.5m 9.5m
Storeys (#) Apartment (RM5) Row Housing (RM3)	4 storeys 2 storeys	4.0 storeys 2.5 storeys
<b>Lot 2 (Southern Portion of Site)</b>		
Site Area (m <sup>2</sup> )	7282m <sup>2</sup>	1400m <sup>2</sup>

Site Width (m)	104.97m	30.0m
Site Depth (m)	88.21m	35.0m
Site Coverage (%)	31%/ 52%	40% (60% with buildings, driveway, parking)
F.A.R.	0.96	1.24
Setbacks (m)	RM5	RM5
- Front (east)	6.0m	6.0m
- Rear (west)	4.0m to heritage building 9.0m to proposed building	9.0m
- Side (south)	7.5m	7.5m
- Side (north)	4.0m	7.5m
Parking	31 surface parking spaces 73 underground spaces Total 104	16 1 bedroom @ 1.25 = 20 56 2 bedroom @ 1.50 = 84 Total 104
Bicycle Stalls (#)	44 stalls to be provided in underground parking & adjacent to building entrances	36 stalls (0.5 per dwelling unit of Class I) 8 stalls (0.10 per dwelling unit of Class II) Total 44
Separation between principal buildings	13.72 m	3.0m
Height (m)	7.2m	9.5m
Storeys (#)	4 storeys	4 storeys

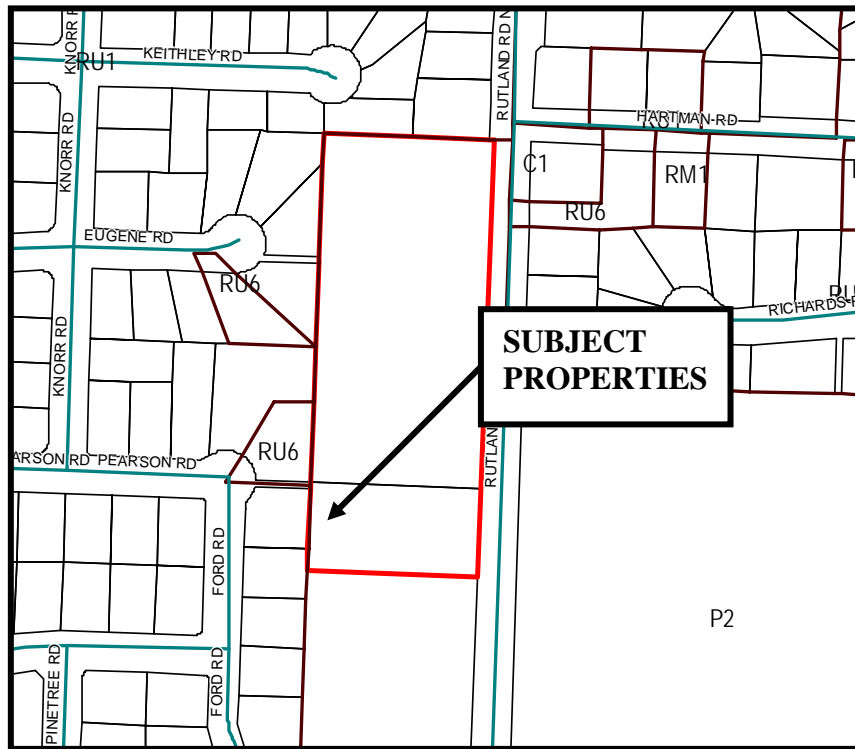
## 5.2 Site Context

The subject property is located on Rutland Road between McCurdy Road and Leathead Road.

Adjacent zones and uses are:

- North - RU1 - Large Lot Housing
- East - RU1 - Large Lot Housing,  
- C1 - Local Commercial
- RU6 - Two Dwelling Housing
- South - P2- Education & Minor Institutional
- West - RU1 - Large Lot Housing,  
- RU6 – Two Dwelling Housing

### Site Location Map



### 5.3 Existing Development Potential

The proposed zoning is RM3- Low Density Multiple Housing. The purpose is to provide a zone for low density multiple housing on urban services. Permitted uses include apartment housing, congregate housing, group home (major), row housing, semi-detached housing, stacked row housing. Secondary uses care centres (major) and home based businesses (minor).

The purpose of the RM5 – Medium Density Multiple Housing zone is to provide a zone primarily for medium density apartments. The principal uses in this zone are apartment housing, congregate housing, group homes (major), and stacked row housing. Secondary uses include care centres (major), and home based businesses (minor).

### 5.4 Current Development Policy

#### 5.4.1 City of Kelowna Strategic Plan (1992)

One of the objectives of the Strategic Plan is “to develop a more compact urban form by increasing densities through infill and re-development within existing urban areas and to provide for higher densities within future urban areas” (Objective 1.1). The proposal is consistent with these objectives and with their accompanying strategies.

#### 5.4.2 Kelowna Official Community Plan

The proposal is not consistent with the land use designation Education & Minor Institutional in the Official Community Plan future land use designation (OCP, Chapter 15). However, with respect to the proposed increase in densities on the site, an OCP policy does provide for more intensive uses than those envisioned in the OCP. The policy states that the City may consider supporting an OCP

amendment and rezoning application for residential densities greater than those provided for in the OCP where:

- A portion of the proposed units are available for affordable, special needs or rental housing identified to be in short supply (guaranteed through a Housing Agreement); and
- Appropriately designated sites can be proven to be functionally unsuitable for the proposed housing; and
- Supporting infrastructure is sufficient to accommodate the proposed development (or the developer is prepared to upgrade the necessary infrastructure); and
- The proposed densities do not exceed the densities provided for by more than one increment.
- The project can be sensitively integrated into the surrounding neighbourhood, with no more than a one-storey height gain between the proposed development and the height permitted within land uses assigned to adjacent parcels (Where the property being proposed for redevelopment is large, consideration may be given to providing greater heights at the centre of the property provided that the new building is sensitively integrated with the surrounding neighbourhood); and
- Approval of the project will not destabilize the surrounding neighbourhood or threaten viability of existing neighbourhood facilities (e.g. schools, commercial operations etc.)

The applicant has not requested a Housing Agreement to provided affordable, special needs or rental housing at this time. In addition, the conceptual plans for the apartment buildings on the southern lot do not provide the one-storey height gain as per the OCP policies. The proposal, however, is consistent with various OCP policies, including the following:

- Develop a more compact urban form that maximizes the use of existing infrastructure, by increasing densities through development within existing areas.
- Support a land use approach where residential densities increase as proximity to the core of Urban Centres increases.
- Pursue opportunities for financial and other incentives to be administered by the City to encourage the retention, restoration and maintenance of heritage buildings.

## 6.0 TECHNICAL COMMENTS

### 6.1 Canada Post

Mail delivery equipment will be required.

### 6.2 Fire Department

Engineered fire flows required. Fire hydrant placement as per City of Kelowna Bylaw. 6 Meter road width required.

### 6.3 FortisBC

Fortis will provide underground electrical service.

### 6.4 Irrigation District (Black Mountain Irrigation District)

No objections subjects to the fulfillment of BMID service requirements.



6.5 Inspections Department

No comment on Zoning and OCP amendment.

6.6 Interior Health

No comment.

6.7 Parks Manager

All plant material (trees, shrubs, ground covers and seed/sod) used in BLVD to be reviewed by City Parks Division. All materials located in BLVD to meet city standard for size and method of installation.

All entry feature signs for the proposed development will be located on private property and not on City BLVD.

BLVD maintenance including watering (manual or automated irrigation), shrubs, ground cover, sod, and seeded areas will be the responsibility of owner/occupant.

In an effort to conserve water, all automated irrigation systems will be design to minimize overspraying on non-landscaped areas including City sidewalks, courtyards, parking areas, roadways, etc.

Parks encourages the applicant/property owner to incorporate native plants and xeriscape vegetation into the landscape where practical.

6.8 RCMP

No comment.

6.9 School District No. 23

No response.

6.10 Shaw Cable

Owner/developer to supply and install an underground conduit system as per Shaw Cable drawings & specifications.

6.11 Telus

Will provide underground facilities to this development. Developer will be required to supply and install conduit as per Telus policy.

6.12 Terasen

No comment.

6.13 Works & Utilities

The Works & utilities Department comments and requirements regarding this application to rezone from P-2 to RM-3 and RM-5 are as follows:

6.13.1 Subdivision

- a) Consolidate the parcels.
- b) Dedicate the necessary widening along Rutland Road to provide for one half of the ultimate 30m. road right of way, measured from the road centreline.
- c) Provide easements as may be required.

#### 6.13.2 Geotechnical Study.

We recommend that a comprehensive geotechnical study be undertaken over the entire site. The geotechnical study should be undertaken by a Professional Engineer or a Geoscientist competent in this field. This study should analyze the soil characteristics and suitability for development of the requested zoning. As well, the study should address drainage patterns including the identification of ground water and the presence of any surface springs and the suitability of the lands for disposal of site generated storm drainage. In addition this study must describe soil sulphate contents, the presence or absence of swelling clays,

#### 6.13.3 Domestic water and fire protection.

- a) This development is within the service area of the Black Mountain Irrigation District (BMID). The developer is required to make satisfactory arrangements with the BMID for these items. All charges for service connection and upgrading costs are to be paid directly to the BMID.
- b) A watermeter is mandatory as well as a sewer credit meter to measure all the irrigation water. Watermeters must be housed in an above-ground, heated, accessible and secure building, either as part of the main site buildings or in a separate building. Remote readers units are also mandatory on all meters.

#### 6.13.4 Sanitary Sewer.

- a) The subject property is currently serviced and connected to the municipal wastewater collection system. All the fees associated with the sanitary sewer service have been paid by the previous owners of the property. There are no connection fees associated with this application.

#### 6.13.5 Drainage.

- a) A comprehensive site drainage management plan and design to comply with the City's drainage design and policy manual, is a requirement of this application. The drainage study should indicate the size and location of the detention pond(s) and provide for a positive outflow to the existing municipal storm drainage system. This plan can become part of the geotechnical study to identify possible ground recharge/detention areas.

#### 6.13.6 Power and Telecommunication Services.

The services to this development are to be installed underground. It is the developer's responsibility to make a servicing application to the respective utility companies. The utility companies are then required to obtain the city's approval before commencing their works.

#### 6.13.7 Road improvements.

- a) Rutland Road.

The applicant is responsible to widen Rutland along the frontage of the property, to a paved urban collector complete with curb and gutter and separate sidewalk, fillet paving, storm drainage works, landscaped and irrigated boulevard, street lighting, removal and/or relocation existing utilities as may be required, etc. The estimated cost of this work, for bonding purposes, would be \$121,000.00 and is inclusive of a bonding contingency.

6.13.8 Street lights.

Street lights must be installed on all fronting roads as determined by the Manager of Electrical Utilities.

6.13.9 Access. (To be reviewed in more detail at the DP stage)

- a) Accesses to Rutland Road are satisfactory as shown on the attached sketch.
- b) Both pedestrian accesses connecting to the existing residential area to the west are to be maintained.

6.13.10 Engineering.

Design, construction, supervision and inspection of all off-site civil works and site servicing must be performed by a consulting civil Engineer and all such work is subject to the approval of the city engineer.

6.13.11 DCC Credits.

None of the required improvements qualify for DCC credit consideration, as these upgradings are not identified in the current DCC schedules.

6.13.12 Bonding and Levies Summary.

- a) Performance Bonding
  - Rutland Road frontage upgrading \$121,000.00
- b) Levies N/A

7.0 PLANNING AND CORPORATE SERVICES DEPARTMENT

**Official Community Plan Amendment & Rezoning**

The application to amend the future land use designation of the subject properties to allow the properties to be rezoned to the RM3- Low Density Multiple Dwelling Housing and RM5- Medium Density Multiple Dwelling Housing zones is inconsistent with the future land use designation of Educational/Institutional.

The OCP, however, does make certain provisions to allow for the consideration of more intensive uses than those identified by the OCP future land use designation. The applicant has satisfied some of these provisions by providing some transition to the surrounding neighbourhood by buffering the adjacent single family homes from the four storey apartment building with two storey semi-detached and row housing buildings on the northern portion of the site. The proposed four storey apartment buildings proposed on the southern portion of the site, however, do not fulfill this provision. Currently the concept plans show a four storey apartment building, with the minimum required rear yard setback of 9.0m, abutting the adjacent properties. At the time of application for the development permit, the applicant is strongly encouraged to consider a building design at that location which is more sensitive to the abutting properties.

The OCP also outlines that, in considering an increase in density, that affordable, special needs or rental housing should be considered and established through a Housing Agreement. In order to ensure consistency with OCP policy, the applicant is encouraged to provide such housing as part of this development. Provision of such housing is critical to ensuring that the project could be considered consistent with established policy direction. It is acknowledged however that the

applicant is proposing to restore the heritage building, and such an effort could be argued as being equally as important as providing affordable housing.

Positive aspects of this application include the fact that it is located adjacent to a busy street and bus route (Rutland Rd N), it is in close proximity to the Rutland Urban Centre and to several schools, the height of the buildings around the perimeter of the property are similar in height to the surrounding homes and one of Rutland's most prominent heritage buildings is proposed to be retained.

In addition, the proposal is consistent with various OCP policies which call for the development of a more compact urban form, increased densities as proximity to the core of Urban Centres, and the encouragement of the retention, restoration and maintenance of heritage buildings.

### **Development Permit**

The Development Permit Guidelines for the Form and Character of Multiple Unit Development apply to the proposed development. At this time, the applicant is applying for a development permit for the northern portion of the site including the townhouses and one apartment building. The proposed project is consistent with the provisions of those guidelines which call for the provision of ground-level access for first storey units and the provision of outdoor amenity space.

In addition to meeting the guideline provisions, a prime concern of this project should be the integration of the residential buildings proposed for the site with the former Rutland Elementary School. This integration should be in a manner that gives the school building the deference it deserves by virtue of its status as a recognized heritage building within the community. The four-storey apartment buildings use similar window forms and materials to relate to the existing brick schoolhouse structure, thus somewhat achieving a dialogue between the old and the new and a sense of continuity with the past. This is illustrated through the use of brick accents, arched windows treatments, and gabled sub-roofs which duplicate architectural detailing found on the exiting brick schoolhouse.

Staff notes that because of the proposed height, massing, and proximity of the flanking residential structures and their location closer to the street, the stature of the school when seen from Rutland Rd. will likely be diminished by the flanking buildings. However, staff acknowledges that the open space in front of the former school is proposed to be maintained. Staff encourages the applicant to use the space to enhance the school structure as a community focal point, as well as using it as an amenity space for the residents. Development of the space in this manner could simultaneously provide a visual amenity from the street as well as enhance the project's identity within the community. In accordance with the recommendation of the CHC, the applicant is encouraged to shift the proposed apartment building on the northern portion of the lot (Phase 1) to the north in order to provide a 45 degree sightline from the school to Rutland Road. All of these aspects will be reviewed and summarized in a separate report to council which will specifically address the development permit.

### **Heritage Revitalization Agreement**

The Heritage Revitalization Agreement will help to ensure the preservation and restoration of the Rutland Elementary School Heritage Building. The HRA will require the restoration of the building prior to the development of the southern portion of the site along with the two apartment buildings. The agreement is to be registered on the title of the property. After the HRA is registered on title, any new development, including the exterior renovation of the heritage building and any new buildings in Phase II, will require approval under a heritage alteration permit.

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Andrew Bruce  
Development Services Manager

Approved for inclusion   
R.L. (Ron) Mattiussi, ACP, MCIP  
Director of Planning & Corporate Services

KN  
Attach

**ATTACHMENTS**

(not attached to the electronic version of the report)

- Location of subject property
- Site plan
- Elevations
- Landscaping Plan

**HERITAGE REVITALIZATION AGREEMENT**

DOCUMENT APPROVAL			
Document No. HRA04-0003			
Cir	Department	Date	Init.
	Planning		
	Wrks. & Util.		
	Insp. Serv.		
	City Clerks		

**THIS AGREEMENT** made the \_\_\_\_ day of \_\_\_\_\_, 2004.

**BETWEEN:**

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

(hereinafter called the "City")

OF THE FIRST PART

**AND:**

The Board of School Trustees of School District No. 23 (Central Okanagan)  
599 Harvey Avenue  
Kelowna, British Columbia, V1Y 6C7

(hereinafter called the "Owner")

OF THE SECOND PART

**WHEREAS** a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the owner of Heritage Lands pursuant to Section 966 of the *Local Government Act*.

**AND WHEREAS** the Owner owns certain real property on which is situated a building of heritage value known as the Rutland Elementary School constructed in 1913 and which property and heritage building are situated at 770 & 780 Rutland Road, Kelowna, British Columbia as shown on *Schedule "A"* and legally described as:

Parcel Identifier: 012-395-340 & 011-151-196

Legal Description: Lot 48, Section 26, ODYD, Plan 428 except Parcel A (Plan B3687) & Lot 1, Section 26, Township 26, ODYD, Plan 2166

(herein called the "Heritage Lands")

**AND WHEREAS** the Owner has presented to the City a proposal for the use, development, and preservation of the Heritage Lands and building and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*;

**AND WHEREAS** a local government must hold a public hearing on the matter before entering into or amending a heritage revitalization agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Sections 890 to 894 of the *Local Government Act* apply;

**AND WHEREAS** within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the Local Government Act and give notice to the Minister responsible for the Heritage Conservation Act in accordance with Section 977 of the Local Government Act;

**NOW THEREFORE** in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1.0 Heritage Revitalization**

- 1.1 The parties agree that the Heritage Lands have heritage value, deserving of protection and conservation and the Owner specifically agrees to restore, maintain, preserve and protect the heritage character of the heritage buildings located on the Heritage Lands in accordance with attached Schedules "A", "B" & "C".
- 1.2 The parties agree that the Heritage Lands may, notwithstanding the RM5 – Medium Density Multiple Dwelling Housing zoning on the Heritage Lands, be used for the following permitted uses within the Heritage Building on the identified Heritage Lands:
  - a) 8 residential units
- 1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the Heritage Lands.
- 1.4 Where a heritage alteration permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Director of Planning and Corporate Services.

## **2.0 Conservation and Maintenance of Existing Development**

- 2.1 The Owner agrees not to alter the exterior of the heritage building except pursuant to a heritage alteration permit issued by the City.
- 2.2 The Owner shall maintain the brick Rutland School building to ensure the integrity and preservation of the heritage building through regular maintenance and repair to prevent deterioration of the building. This will include heating and the prevention of water intrusion and damage from sun, wind, and other infestations. Maintenance and repair includes the replacement of roofing, windows, and damaged exterior material and, when necessary, painting to protect exterior features.



- 2.3 If original features must be replaced, the new material shall be similar or identical to the original. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building's heritage style.

### **3.0 Future Development**

- 3.1 The Owner agrees to restore and rehabilitate the brick heritage building for residential use prior to the subdivision and development phasing plan outlined in Schedule "B".
- 3.2 The Owner agrees that future development of the site will:
- a) maintain the brick heritage building and rehabilitate the interior of the building to allow for the development of eight residential units.
  - b) be in conformance with the general provisions of the City of Kelowna's Zoning Bylaw No. 8000 as amended, and Sign Bylaw No. 8235 as amended and the specific requirements of the RM5 – Medium Density Multiple Housing zone unless otherwise permitted or regulated through a heritage alteration permit or an amendment to this agreement;
  - c) allow for variances to the required rear yard and side yard adjacent to the Heritage Building will be permitted at the time of subdivision as outlined on Schedule "B".
- 3.2 No additional buildings will be permitted between the east facade of the brick heritage building and Rutland Road. Any additional buildings developed on the property must match or complement proportions, forms, materials, and heritage elements of the Rutland School building as shown in Schedule "B". Any new building not shown in Schedule "B" must be approved by City Council through the heritage alteration permit process or an amendment of this Agreement.
- 3.3 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedule "C" and forming part of this agreement.
- (herein after called the "Landscaping Works")
- 3.4 This Agreement shall be amended by redevelopment plans approved by a heritage alteration permit issued pursuant to Section 972 of the *Local Government Act* according to the provisions of Section 8.0 of this Agreement.

### **4.0 Servicing**

- 4.1 The Owner agrees to provide, at the Owner's expense, for all necessary utility servicing required by the proposed development of the Heritage Lands in accordance with the standards of the Subdivision, Development, and Servicing Bylaw No. 7900, RM3 and RM5 Zone.

- 4.2 The Owner agrees to provide and pay for all servicing required by the proposed development of the Heritage Lands and to provide required bonding for same including, but not limited to, domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedication and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting.

## **5.0 Commencement and Completion**

- 5.1 The Owner agrees to commence the maintenance works forthwith upon the adoption of this Heritage Revitalization Agreement Authorization Bylaw to continue a minimum standard of maintenance that will prevent deterioration of the building.
- 5.2 The Owner agrees to commence the servicing works forthwith, on an as-needed basis only, upon issuance of a heritage alteration permit for a principal or secondary use that requires, in the opinion of the City, additional servicing as listed in Section 4.2 of this agreement.

## **6.0 Damage or Destruction**

In the event that the heritage building is damaged or destroyed, the parties agree as follows:

- a) The Owner may repair or reconstruct the heritage building in which event the Owner shall forthwith commence the repair or reconstruction and complete same within two years of the date of damage or destruction; or
- b) The Owner may choose not to repair or reconstruct the building in which event the City may, in its discretion, by bylaw after conducting a public hearing in the manner provided in Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the City of Kelowna zoning bylaws and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

## **7.0 Breach**

In the event the Owner is in breach of any term of this agreement, the City may give the Owner notice of writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time limited by the notice, the City may, by bylaw and after conducting a public hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon this agreement shall be terminated and all use and occupation of the Heritage Lands shall thenceforth be in accordance with the City of Kelowna zoning bylaws and in accordance with all other bylaws and regulations of authority having jurisdiction.

## **8.0 Amendment**

- 8.1 The parties acknowledge and agree that this agreement may only be amended by one of the following means:

- a) by bylaw by consent of the parties provided that a public hearing shall be held if an amendment would permit a change of use or density of use on site; or
- b) by heritage alteration permit issued pursuant to Section 972 of the *Local Government Act*.

## **9.0 Representations**

It is mutually understood and agreed between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this agreement.

## **10.0 Statutory Functions**

Except as expressly varied or supplemented herein, this agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

## **11.0 Enurement**

This agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

## **12.0 Other Documents**

The Owner agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this agreement.

## **13.0 Notices**

Any notice required to be given pursuant to this agreement shall be in writing and shall either be delivered or mailed by registered mail as follows:

- a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

Attention: City Clerk

- b) To the Owner:

The Board of School Trustees of School District No. 23 (Central  
Okanagan)  
599 Harvey Avenue  
Kelowna, British Columbia, V1Y 6C7

or to such other address to which a party hereto may from time to time advise in writing.

#### 14.0 No Partnership or Agency

The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date and year first above written.

**SIGNED** in the presence of:

City Of Kelowna (Authorized Signatories)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Occupation

**SIGNED** in the presence of:

(Authorized Signatories)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation